

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 5772 of 2006

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Order:

The petitioner, as party-in-person, has filed this writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for the following relief:

To issue an order of direction in the nature of Writ of Mandamus, to call for the records of his Punch Card, Attendance Register, Log Book, Pay Slip etc., and ten letters written to ED/SR, to prove absence on 18.10.1998 and the false statement in termination order dated 7.8.2000, and quash the impugned termination order No.294, dated 7.8.2000 declaring it as arbitrary, illegal and unjustifiable, and grant either premature retirement with Rs.80.00 lakhs relief and normal retirement benefits or reinstatement him into service with all back wages, benefits w.e.f. 4.10.1999 as per respondent's choice, in the interest of justice and pass such order or orders as this Hon'ble High Court may deem fit and proper in the circumstances of the case.

The petitioner states that while he was working as Engineer with the National Thermal Power Corporation (NTPC) at Secunderabad, he was transferred to Kerala by the 2nd respondent- Executive Director, NTPC. The petitioner states that though initially he refused to join at the transferred place, but later he decided to join, and in that regard, though he made ten representations to permit him to join at the transferred place or give him premature retirement, the 2nd respondent unfortunately, passed orders dated 07.08.2000 terminating his services. The petitioner states that assailing the said order of termination, he filed writ petition in

W.P. No. 21519 of 2000, but the same was dismissed by an order dated 17.12.2002 of this Court. The writ appeal filed against the said judgment in W.A. No. 268 of 2003, was also dismissed by a Division Bench of this Court.

The petitioner states that the writ petition and writ appeal filed by him came to be dismissed by this Court based on the false statement made by the respondents in their counter that that the petitioner absented from duties from 18.10.1998 without sanction of leave, which in fact is not correct, and that he had absented himself from duty without sanction of leave from 18.10.1988 to 07.03.1990, for which he was visited with punishment. The petitioner states that the application in W.A.M.P. No. 3096 of 2005, filed by him seeking to review the judgment in W.A. No. 268 of 2003, was also dismissed by a

Division Bench of this Court vide orders dated 07.10.2005 without providing him an opportunity to bring to the notice of the Court, the false statement made by the respondents in their counter, which resulted in the dismissal of the writ petition as well as the writ appeal filed by him.

The petitioner states that the 2nd respondent instead of terminating him from service, ought to have permitted him to take premature retirement, so that he would have been paid the benefits flowing from such premature retirement, and would have started either his own business or searched for alternative employment, but the action of the 2nd respondent in terminating his service is illegal and arbitrary, and prayed that the order of termination passed by the 2nd respondent be set aside and he be either reinstated into service or permitted to retire prematurely by paying him Rs.80.00 lakhs as compensation for the trauma he had undergone all these days because of the illegal termination order passed by the 2nd respondent.

The learned Standing Counsel for the respondents-NTPC submitted that the petitioner by office order No.349/98, dated 28.08.1998, was transferred to Kerala. Assailing the said order of transfer, he filed writ petition in W.P. No. 26155 of 1998, and the same by order dated 02.07.1999, was disposed of by this Court directing the respondents to take a decision on the issues raised by the petitioner. In compliance of the said order, the respondents considered the issues raised by the petitioner and by order dated 04.10.1999, while rejected them decided to implement the order of transfer. The petitioner assailing the said order, filed writ petition in W.P. No. 21484 of 1999, which by order dated 13.10.1999, was dismissed by this Court. The petitioner again assailing the order of transfer on the self-same grounds filed writ petition in W.P. No. 7734 of 2000, which by order dated 07.06.2000 was dismissed by this Court. Thereafter, the respondents by letter dated 09.02.2000 called upon the petitioner to join at the transferred place, but the petitioner having received the said letter, replied to the same by letter dated 21.02.2000 stating that he will not respond to any letter until the court settlement. Thereafter, by another letter dated 09.03.2000 called upon the petitioner to report duty failing which, he would lose his lien, but the petitioner did not respond and in stead addressed ten letters raising unconnected issues. As the petitioner absented himself from duty for more than 300 days and failed to report for duty, the respondents having regard to

Rule 24.9 of the NTPC Rules, which prescribes that if any employee remained absent unauthorizedly for any reason whatsoever, he would lose his lien to the post, terminated the services of the petitioner by order dated 07.08.2000. Assailing the said order of termination, the petitioner filed writ petition in W.P. No. 21519 of 2000, but the same was dismissed by this Court by order dated 17.12.2002. The writ appeal in W.A. No. 268 of 2003, filed by the petitioner assailing the order in the writ petition, was also dismissed by a Division Bench of this Court by judgment dated 12.04.2005. The application in W.A.M.P. No. 3096 of 2005, filed by the petitioner seeking to review the judgment in W.A. No. 268 of 2003, was also dismissed by a Division Bench of this Court by order dated 07.10.2005. She submitted that the order of termination of the petitioner having been upheld by this Court, the present writ petition filed by the petitioner assailing the very same order of termination is not maintainable.

Heard the petitioner and the learned Standing Counsel for the respondents-NTPC.

The petitioner, admittedly assailed the order of termination dated 07.08.2000 in W.P. No. 12519 of 2000, which by order dated 17.12.2002 was dismissed by this Court. The writ appeal in W.A. No. 268 of 2003, filed by the petitioner assailing the order in the writ petition, was dismissed by a Division Bench of this Court by judgment dated 12.04.2005. The application in W.A.M.P. No. 3096 of 2005, filed by the petitioner seeking to review the judgment in W.A. No. 268 of 2003 was also dismissed by a Division Bench of this Court vide order dated 07.10.2005. As the petitioner did not choose to assail the said order in appeal before the Supreme Court, the same attained finality. Therefore, this writ petition filed by the petitioner assailing the very same order of termination, which was confirmed by this Court, is not maintainable for the earlier judgments upholding the order of termination, operate as *res judicata* for the maintainability of the present writ petition.

Be that as it may, it is the specific case of the respondents that the petitioner after receiving the order of termination, is said to have addressed a letter dated 04.01.2001 to the Chief Personnel Manager, NTPC, requesting him to release the terminal benefits after deducting the House Building Advance, and that in pursuance of the said letter, the respondents paid an amount of Rs. Rs.1,73,506/- and Rs. 25,075/-, by Demand Draft Nos. 17828 and

178320, dated 16.01.2001 and 18.01.2001 to the petitioner, which he is said to have encashed. The petitioner having accepted the order of termination, and his order of termination, already having been upheld by this Court when the writ petition and writ appeal filed by him assailing the order of termination was dismissed, and he having received the terminal benefits much before the dismissal of his writ petition and writ appeal, cannot be allowed to say that he is entitled to assail the order of termination once again in this writ petition.

Though the petitioner contends that because of the false representation made by the respondents in their counter that the petitioner was absent from duties without sanction of leave from 18.10.1998 instead of 18.10.1988, the writ petition and the writ appeal filed by him assailing the order of termination, came to be dismissed by this Court, the fact remains, which is evident from the counter filed by the respondents in the present writ petition, that the petitioner is said to have absented himself from duties from 18.10.1988 to 07.03.1990 without sanction of leave, and that during the said absented period, he went to Saudi Arabia for employment in Saline Water Treatment Plant, and for such unauthorized absence, he was issued charge sheet dated 04.12.1988, and that after due enquiry, he was visited with the punishment of withholding of promotion for a period of two years was by order dated 09.04.1999 of the respondents. Since the petitioner is said to have been visited with the punishment of promotion for a period of two years by the respondents for his absence from duty from 18.10.1988, which has nothing to do with his order of termination, the petitioner cannot be allowed to contend that this Court had dismissed the writ petition and writ appeal filed by him based on the alleged false representation made by the respondents that the petitioner absented himself from duty from 18.10.1998.

If the petitioner feels that the application in W.A.M.P. No. 3096 of 2005, filed by him seeking to review the judgment in W.A. No. 268 of 2003, was dismissed by a Division Bench of this court on 12.04.2005 without giving him opportunity to bring to the notice of the Court about the alleged false representation made by the respondents, due to which the writ petition and the writ appeal filed by him came to be dismissed, the remedy for the petitioner, if any, is to approach the Supreme Court and file appeal, which the petitioner did not do. At any rate, the order of termination of the petitioner, passed by the respondents having been upheld by this Court in writ petition and writ

appeal, filed by him assailing the order of termination, which were dismissed, and the review application filed by him seeking to review the judgment in writ appeal also having been dismissed, the petitioner cannot be allowed to question the order of termination passed against him by the respondents once again in this writ petition.

The contention of the petitioner that the impugned order of termination has to be set aside and the respondents should be directed to retire him prematurely by paying him the benefits flowing from such premature retirement having regard to the fact that his ten letters in that regard remained unanswered by the respondents, cannot be accepted, for the reason that it is the specific case of the respondents that the petitioner despite several letters failed to report for duty, and that in one of the letters he had informed the respondent that he would not reply to any of their letters until the Court case is settled. This apart, it is the specific case of the respondents that the petitioner instead of responding to their letters and reporting for duty, had addressed the ten letters raising issues, which have nothing to do with the order of transfer, and as the petitioner failed to report for duty at the transferred place and absented himself from duty for more than 300 days, they having regard to Rule 24.9 of the NTPC Service Rules, which states that an employee remaining absent unauthorizedly would lose his lien in the post, terminated his services. The said order of termination, as already stated above, having been upheld by a Division Bench of this Court in writ appeal, and the same having attained finality as no further appeal was preferred, the petitioner cannot be allowed to again assail the order of termination and seek its quashing and seek direction to the respondents to retire him prematurely and pay him the benefits flowing from such premature retirement.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 8th August, 2006.

KSR